

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	James J. & Karen L. Toomey)	
	Dist. 2, Map 53K, Group B, Control Map 53K,)	Cumberland County
	Parcel 13.00)	
	Residential Property)	
	Tax Year 2007)	

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$53,800	\$328,800	\$382,600	\$95,650

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on September 4, 2007 in Crossville, Tennessee. In attendance at the hearing were James and Karen Toomey, the appellants, and Cumberland County Property Assessor's representative Mary Cox.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 2,468 square foot residence constructed in 2005 located at 125 Forest Hill Drive in Fairfield Glade, Tennessee.

The taxpayers contended that subject property should be valued at a maximum of \$325,724. In support of this position, the taxpayers argued that their total construction costs were only \$325,763.67.¹ In addition, the taxpayers asserted that the current appraisal of subject property does not achieve equalization as evidenced by the assessor's appraisals of other homes in the area. The taxpayers also objected to the fact their home was classified as an "improvement type 05" whereas other homes were appraised as "improvement type 03." Finally, the taxpayers noted that "the home at 129 Forest Hill Drive just sold for \$309,000 or [approximately] \$140 per square foot."²

The assessor contended that subject property should be valued at \$382,600. In support of this position, three comparable sales were introduced into evidence. Ms. Cox maintained that the comparable sales support the current appraisal of subject property as indicative of fair market value as of January 1, 2007, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a).

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic

¹ This figure includes an upward adjustment to the land value of \$12,800.

² See question #16 on the appeal form.

and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should remain valued at \$382,600 based upon the presumption of correctness attaching to the decision of the Cumberland County Board of Equalization.

Since the taxpayer is appealing from the determination of the Cumberland County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

As will be discussed below, the administrative judge finds that the taxpayers' analysis does not comport with Tennessee law. Ironically, the administrative judge finds that the taxpayer's own filing supports the assessor's estimate of value. In particular, Mr. Toomey's letter to the State Board of Equalization dated July 17, 2007 provides in pertinent part as follows:

* * *

On June 25th, I met with Jeff Hughes of Hughes Real Estate Services to get his opinion of my assessment increase. . . .

It was Jeff's opinion that he would list my home for about \$390,000 and probably be able to sell it for between \$370,000 and \$380,000, however he also felt that the assessment was high because it is normally less than the price by which he could make a sale.

Jeff and I both agreed that a more equitable assessment would be somewhere between \$325,723. . . and \$350,000.

* * *

Respectfully, it appears that the taxpayers have a misapprehension of Tennessee law. As noted above, Tenn. Code Ann. § 67-5-601(a) requires that property be valued at its market value. The administrative judge finds that property is supposed to be appraised at 100% of its market value when it is reappraised.³

Ironically, Mr. Hughes' opinion of value was elicited on June 25, 2007. Given the decline in the real estate market, it seems reasonable to assume that, if anything, his estimate of market value would have been even higher on January 1, 2007.

The administrative judge finds that comparable sales normally constitute the best evidence of the market value of a home. As noted by the Assessment Appeals Commission in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992):

³ The administrative judge finds that many values do indeed drop below market value between reappraisals. The administrative judge finds that the very purpose of a reappraisal program is to appraise all properties in the jurisdiction at market value.

The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value. . . .

Final Decision and Order at 2.

The administrative judge finds that the one sale referenced by the taxpayers was not adjusted and cannot meaningfully be compared with the subject property absent additional analysis. Moreover, one sale does not necessarily establish market value. As observed in *Tuthill v. Arkansas County Equalization Board*, 797, S. W. 2d 439, 441 (Ark. 1990):

Certainly, the current purchase price is an important criterion of market value, but it alone does not conclusively determine the market value. An unwary purchaser might pay more than market value for a piece of property, or a real bargain hunter might purchase a piece of property solely because he is getting it for less than market value, and one such isolated sale does not establish market value.

In addition, it appears that the sale occurred after January 1, 2007 and must be deemed irrelevant in any event. See *Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County - Tax Year 1989) wherein the Assessment Appeals Commission ruled that “[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events.” Final Decision and Order at 3.

The administrative judge finds that cost does not necessarily reflect market value. In this case it cannot be determined from exhibit A to the appeal form whether the payments to the builder include all hard and soft costs. Furthermore, given a January 1, 2007 assessment date, the costs would have to be adjusted for inflation. Moreover, Mr. Hughes’ opinion of market value indicates that the payments to the builder are not indicative of market value.

The administrative judge finds that the taxpayer’s equalization argument must be rejected. The administrative judge finds that the State Board of Equalization has historically adhered to a market value standard when setting values for property tax purposes. See *Appeals of Laurel Hills Apartments, et al.* (Davidson County, Tax Years 1981 and 1982, Final Decision and Order, April 10, 1984). Under this theory, an owner of property is entitled to “equalization” of its demonstrated market value by a ratio which reflects the overall level of appraisal in the jurisdiction for the tax year in controversy.⁴ The State Board has repeatedly refused to accept the *appraised* values of purportedly comparable

⁴ See Tenn. Code Ann. §§ 67-5-1604-1606. Usually, in a year of reappraisal – whose very purpose is to appraise all properties in the taxing jurisdiction at their fair market values – the appraisal ratio is 1.0000 (100%). That is the situation here.

properties as sufficient proof of the *market* value of a property under appeal. For example, in *Stella L. Swope* (Davidson County, Tax Years 1993 and 1994), the Assessment Appeals Commission rejected such an argument reasoning as follows:

The assessor's recorded values for other properties may suffer from errors just as Ms. Swope has alleged for her assessment, and therefore the recorded values cannot be assumed to prove market value.

Final Decision and Order at 2.

The administrative judge finds it irrelevant whether subject property was appraised as an improvement type 03 or 05.⁵ See *Devere M. Foxworth* (Polk Co., Tax Year 2001) wherein the Assessment Appeals Commission rejected the taxpayer's attempt to establish a lower value by attacking portions of the property record card. The Commission reasoned in pertinent part as follows:

The problem with evaluating a property tax assessment on the basis of the pieces of the assessor's record is at least two-fold. First, the pieces may not compare one to another, i.e., the value attributed by the CAAS system to a typical component may not represent the true contribution of the component as represented in the subject property. Second, the pieces are part of a whole that is merely a computer generated approximation of the legal standard of fair market value. The result for a particular property in the assessor's system may or may not yield fair market value. The appeal process therefore looks to more traditional methods of individual property valuation in order to be sure the legal standard has been met.

Final Decision and Order at 1.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2007:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$53,800	\$328,800	\$382,600	\$95,650

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12


⁵ The State of Tennessee Computer Assisted Appraisal System (CAAS) Procedures Manual defines improvement type 03 as "Special residential properties unique to areas or to type of construction such as modular homes, log homes or cabins." Improvement type 05, in turn, is defined as "Single family residence normally containing more than 2,000 square feet and normally over 150 points..."

of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 21st day of September, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: James J. & Karen L. Toomey
Ralph Barnwell, Assessor of Property